

# **METROPOLITAN AREA PLANNING COMMISSION**

## **MINUTES**

**January 7, 2010**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, January 7, 2010, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: G. Nelson Van Fleet, Chair; Debra Miller Stevens, Vice Chair; David Dennis; Darrell Downing; Shawn Farney; David Foster; Bud Hentzen; Hoyt Hillman; Bill Johnson; Joe Johnson; Ronald Marnell; John W. McKay, Jr.; and M.S. Mitchell. Don Sherman was absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; Sharon Dickgrafe, Assistant City Attorney; Bob Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

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1. Approval of the December 17, 2009 MAPC meeting minutes:

**CHAIRMAN VAN FLEET** announced that approval of the December 17, 2009 MAPC meeting minutes would be deferred two weeks due to an administrative error.

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### **2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB 2009-80: One-Step Final Plat -- BERAN COUNTRY ESTATES ADDITION**, located at the northeast corner of 127<sup>th</sup> Street East and 39<sup>th</sup> Street South.

**NOTE:** This is an unplatted site located within three miles of Wichita's boundary. It is located in an area designated as "2030 Urban Growth Area" by the Wichita-Sedgwick County Comprehensive Plan.

#### **STAFF COMMENTS:**

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. City of Wichita Water Utilities Department requests a petition for future extension of sanitary sewer (main and lateral).
- C. The site is currently located within the Sedgwick County Rural Water District No. 3. If service is available, feasible and the property is eligible for service, County Code Enforcement recommends connection.
- D. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- E. County Engineering requests side yard drainage easements as depicted on the drainage plan. The 80-foot drainage easement platted through lots 6, 11 and 12 shall be replaced with a floodway reserve. The drainage plan is approved subject to the need for additional calculations.
- F. County Engineering has approved the access controls. The plat denotes one street opening along both 127<sup>th</sup> St. East and 39<sup>th</sup> St. South.
- G. In accordance with Access Management Regulations, complete access control is required for arterials intersecting with local streets. Complete access control of 75 feet is needed along 37<sup>th</sup> St. South from 127<sup>th</sup> St. East. Complete access control of 75 feet is needed along 135<sup>th</sup> St. East from 39<sup>th</sup> St. South.

- H. The Access Management Regulations require a 25-foot x 25-foot corner clip at the intersection.
- I. County Fire Department advises the need to address the street length (1,465 feet) of Triple Crown Street. The Subdivision Regulations limit rural cul-de-sacs to 1,200 feet in length unless a contingent dedication of right-of-way or stub street is platted to provide future access to adjoining tracts.
- J. The applicant shall guarantee the installation of the proposed streets.
- K. The platting text shall be revised to include "we, the undersigned."
- L. "Vicinity map" shall be revised to include the correct spelling.
- M. The platting text needs corrected to denote that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. "Beran Country Estates" shall replace "M A A Addition" in the platting text.
- O. Sedgwick County Fire Department advises that the plat should comply with the requirements of the Sedgwick County Service Drive Code.
- P. GIS requests 37<sup>th</sup> Street South be revised to "38<sup>th</sup> St. S." Abbreviations should be used on all streets.
- Q. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineer (ASACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.
- R. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- S. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- T. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- U. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- V. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- W. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant

Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- X. Perimeter closure computations shall be submitted with the final plat tracing.
- Y. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**B. JOHNSON** moved, **MCKAY** seconded the motion, and it carried (13-0).

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### **3. PUBLIC HEARING – VACATION ITEMS**

#### **3-1. VAC2009-41: County request to vacate a portion of platted street right-of-way.**

**APPLICANTS/AGENT:** Jeffrey L. Wilson & Donna J. Wilson (owners/applicants)

**LEGAL DESCRIPTION:** Generally described as a portion of the platted 70-foot wide, 76<sup>th</sup> Street South public street right-of-way (ROW), generally located west of the unplatted cul-de-sac, which is located midway on the south side of Lots 3, Block A and the north side of Lot 3, Block B, Aqueous Acres Addition, Sedgwick County, Kansas. The platted 35-foot front setback on Lots 1 & 2, Block A and Lots 1 & 2, Block B, all in the Aqueous Acres Addition (the applicants' property). The platted 25-foot drainage and utility easement located on Lots 1 & 2, Block A and Lots 1 & 2, Block B, Aqueous Acres Addition.

**LOCATION:** Generally located west of Hoover Road/55th Street West, the western portion of 76th Street South (BoCC #2).

**REASON FOR REQUEST:** Applicants have purchased Lots 1 & 2, Block A and Lots 1 & 2, Block B, all in the Aqueous Acres Addition & want to develop as one property.

**CURRENT ZONING:** The site is a platted, undeveloped public street ROW. All abutting and adjacent properties are zoned RR Rural Residential ("RR").

The applicants are requesting the vacation of the generally described, undeveloped portion of platted 76<sup>th</sup> Street South right-of-way (ROW). 76<sup>th</sup> was platted in the Aqueous Acres Addition as a 70-foot wide residential street. The developed portion of 76<sup>th</sup> (gravel/sand) currently ends, midway along the street frontages of Lots 3, Blocks A & B, Aqueous Acres Addition, as an unplatted, sand and gravel cul-de-sac; this cul-de-sac will be dedicated as a permanent cul-de-sac. There is a platted temporary cul-de-sac located further west (abutting the applicants' Lots 1 & 2, Block B and Lot 1, Block A), which has never been developed, as there is no development beyond the unplatted cul-de-sac; the platted temporary cul-de-sac would be vacated.

The proposed vacation would result in ending 76<sup>th</sup> before its platted intersection with Dugan Road. This

portion of Dugan was also platted on the Aqueous Acres Addition (recorded August 13, 1990) and the northern, abutting Gerhardt Addition (recorded January 11, 1971), as 40-foot wide, ½-street ROW. Dugan is not developed and dead ends on both its north and south ends, approximately ¼-mile from section line roads 71<sup>st</sup> and 79<sup>th</sup> Streets South; the applicants' property would need 76<sup>th</sup> for access to Hoover/55<sup>th</sup> Street West, a paved section line road. This platted part of Dugan will not be part of the vacation of the west portion of 76<sup>th</sup>. 76<sup>th</sup> does not extend beyond the Aqueous Acres Addition, to the west (beyond Dugan) or east (beyond Hoover) which is mostly uninterrupted agricultural land, except for section line roads and scattered large tract/lot single-family residential developments. The vacation would not disrupt current and long standing (at least 19 years) traffic patterns in the predominately rural area.

A FEMA flood zone and platted floodway easement goes over this western portion of 76<sup>th</sup>, as well over significant portions of the applicants' four lots. The County Engineer has stated that the applicants' private drive's location and elevation would need to be reviewed, when the applicants apply for permits with the County, to ensure drainage would not be negatively impacted in the subdivision as well as below and above the subdivision. County Fire has confirmed the materials and dimensions needed for a permanent cul-de-sac; Subdivision (SD) Design Standards 7-201(R) call for a rock with a 75-foot turning radius. The proposed vacation would create a permanent cul-de-sac road, which exceeds the SD standards 7-201(R) of 1,200-foot length (by approximately 235 feet) of suburban cul-de-sacs without access to a stub street or a contingent dedication of ROW. Per the SD, 10-104, Modification of Design Criteria; the MAPC may modify SD design criteria. In the past staff has recommended modified design criteria, which has been approved by the MAPC. The County Engineer and County Fire have agreed that the location of the current cul-de-sac should remain and thus not negatively impact services to the subdivision.

The platted 35-foot front setback will no longer be needed if the ROW is vacated, as the abutting properties will merge into the vacated ROW; setbacks will be per the Unified Zoning Code (UZC) for the RR zoning district. The platted 25-foot drainage and utility easement (which runs parallel to both sides of 76<sup>th</sup>) will be vacated unless modified by the County Engineer; this will not vacate any portion of the platted floodway easement. The site is outside of all Rural Water Districts and there is no public sewer. No franchised utilities have been extended beyond current development in the subdivision.

The site is located within the City of Haysville's area of Subdivision Jurisdiction and the vacation request, as instructed by County Law, has been sent to their Planning Commission and City Council for review and action. The Haysville Planning Commission recommended approval of the request at their December 10, 2009, meeting. The Haysville City Council approved the request at their December 14, 2009 meeting.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from the County Engineer, City of Haysville Engineer, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of platted street right-of-way, the described platted drainage and utility easement and the described platted setback.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time November 26, 2009, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the described portions of platted street right-of-way, platted drainage and utility easement and the platted setback and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Vacate that portion of 76<sup>th</sup> Street South that extends beyond the location of the current gravel and sand cul-de-sac, with the exception of retaining a stub of 76<sup>th</sup> beyond the described cul-de-sac that will extend to the applicants' Lot 2, Block B, Aqueous Acres, as approved by the County Engineer. Provide Planning staff with a legal description of the approved vacated ROW on a word document via e-mail.
- (2) Vacate the platted drainage and utility easement that runs along the approved vacated portion of 76<sup>th</sup>. Provide any needed additional easements, including the extension of the platted floodway easement where it ended at portions of 76<sup>th</sup>, as needed by dedication by separate instrument, prior to this vacation case going to BoCC for final action. Provide Planning staff with a legal description of the approved vacated drainage and utility easement on a word document via e-mail.
- (3) As part of the vacation of the approved western portion of the 76<sup>th</sup>, the platted temporary cul-de-sac, abutting Lots 1 & 2, Block B and Lot 1, Block A, all in the Aqueous Acres Addition will be vacated.
- (4) The current sand and gravel cul-de-sac generally located midway on the south side of Lots 3, Block A and the north side of Lot 3, Block B, Aqueous Acres Addition, shall be dedicated by separate instrument as a permanent cul-de-sac, prior to this vacation case going to BoCC for final action. Those property owners that abut this cul-de-sac must sign the vacation petition and dedication.
- (5) Any relocation or reconstruction of utilities, including drainage, made necessary by this vacation shall be the responsibility and at the expense of the applicants. The applicant shall acquire all required County and applicable plans, permits and inspections, including those needed for the construction of the private drive across the FEMA flood zone.
- (6) Vacate the platted 35-foot setback located on Lots 1& 2, Block A, and Lots 1& 2, Block B, all in the Aqueous Acres Addition. Setbacks will be per RR zoning district standards of the UZC.
- (7) Provide a Restrictive Covenant binding and tying the vacated 76th Street South ROW to Lots 1& 2, Block B and Lots 1& 2, Block A, all in the Aqueous Acres Addition, prior to this vacation case going to City Council for final action. This covenant will also bind and tie the vacated ROW and Lots 1& 2, Block B and Lots 1& 2, Block A, all in the Aqueous Acres Addition, to be conveyed, encumbered, improved, operated and otherwise used together as one undivided parcel, unless said properties are replatted, as approved by the appropriate governing body.
- (8) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

#### **SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate that portion of 76<sup>th</sup> Street South that extends beyond the location of the current gravel and sand cul-de-sac, with the exception of retaining a stub of 76<sup>th</sup> beyond the described cul-de-sac that will extend to the applicants' Lot 2, Block B, Aqueous Acres, as approved by the County Engineer. Provide Planning staff with a legal description of the approved vacated ROW on a word document via e-mail.

- (2) Vacate the platted drainage and utility easement that runs along the approved vacated portion of 76<sup>th</sup>. Provide any needed additional easements, including the extension of the platted floodway easement where it ended at portions of 76<sup>th</sup>, as needed by dedication by separate instrument, prior to this vacation case going to BoCC for final action. Provide Planning staff with a legal description of the approved vacated drainage and utility easement on a word document via e-mail.
- (3) As part of the vacation of the approved western portion of the 76<sup>th</sup>, the platted temporary cul-de-sac, abutting Lots 1 & 2, Block B and Lot 1, Block A, all in the Aqueous Acres Addition will be vacated.
- (4) The current sand and gravel cul-de-sac generally located midway on the south side of Lots 3, Block A and the north side of Lot 3, Block B, Aqueous Acres Addition, shall be dedicated by separate instrument as a permanent cul-de-sac, prior to this vacation case going to BoCC for final action. Those property owners that abut this cul-de-sac must sign the vacation petition and dedication.
- (5) Any relocation or reconstruction of utilities, including drainage, made necessary by this vacation shall be the responsibility and at the expense of the applicants. The applicant shall acquire all required County and applicable plans, permits and inspections, including those needed for the construction of the private drive across the FEMA flood zone.
- (6) Vacate the platted 35-foot setback located on Lots 1& 2, Block A, and Lots 1& 2, Block B, all in the Aqueous Acres Addition. Setbacks will be per RR zoning district standards of the UZC.
- (7) Provide a Restrictive Covenant binding and tying the vacated 76th Street South ROW to Lots 1& 2, Block B and Lots 1& 2, Block A, all in the Aqueous Acres Addition, prior to this vacation case going to City Council for final action. This covenant will also bind and tie the vacated ROW and Lots 1& 2, Block B and Lots 1& 2, Block A, all in the Aqueous Acres Addition, to be conveyed, encumbered, improved, operated and otherwise used together as one undivided parcel, unless said properties are replatted, as approved by the appropriate governing body.
- (8) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**B. JOHNSON** moved, **MCKAY** seconded the motion, and it carried (13-0).

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## **PUBLIC HEARINGS**

4. **Case No.: CON2009-42** - Rex E. Heald Revocable Trust (owner) Westar Energy, Inc. c/o Allyson Wetter (contract purchaser); Professional Engineering Consultants, PA c/o Rob Hartman (agent) Request County Conditional Use for Utility, Major (Westar substation) for new ASR project on property zoned RR Rural Residential.

The West 470.00 feet of the North 470.00 feet of the Northeast Quarter of Section 3, Township 25 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, generally located south of 125th Street North and 1/2 mile west of 151st Street West.

**BACKGROUND:** The applicant is requesting a County Conditional Use for Utility, Major, on a five-acre site zoned RR Rural Residential (“RR”), located on the south side of 125<sup>th</sup> Street North, one-half mile west of 151<sup>st</sup> Street West. The electrical substation would feed electricity from the north-south Westar transmission line located along the edge of the site to the new ASR (Aquifer Surface Recharge) water treatment plant at 117<sup>th</sup> Street North and 119<sup>th</sup> Street West.

The attached site plan shows the electrical substation equipment contained within a compound enclosed by an eight-foot chain link fence (with barbed wire on top). The enclosed compound is 200 feet x 200 feet. Landscaping is shown between the fence and the road. No landscaping is proposed on the other sides, but the site provides a 200-foot wide open space beyond the fenced compound on the east and south. The electrical transmission line is located within this 75-foot open space area (easement) on the west. The proposed construction of the substation is slated to begin in 2010. A statement further describing the proposed use from Westar is attached.

The surrounding property to the east, south and west is zoned RR and is in rural/agricultural use with a few scattered farmsteads. 125<sup>th</sup> Street North is the boundary with Harvey County. The land to the north in Harvey County is zoned A-1 Agricultural and is in similar agricultural use with scattered farmstead. The nearest resident to the proposed site is about 1/8 mile to the northwest in Harvey County.

**CASE HISTORY:** The property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	A-1	Agricultural/farmsteads
SOUTH:	RR	Agricultural/farmsteads
EAST:	RR	Agricultural/farmsteads
WEST	RR	Agricultural/farmsteads

**PUBLIC SERVICES:** The property has access via 125<sup>th</sup> Street North, an unpaved section line road. No personnel are assigned to the site, with personnel visits occurring approximately monthly. Therefore, the facility will have minimal impact on public services. The approval of this request will enhance the delivery of electric service to the ASR water treatment facility.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide,” 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identifies the site as “Rural.” This classification encompasses land outside the 2030 urban growth area. It accommodates agricultural uses as well as rural-based uses no more offensive than typical agricultural uses, including small-scale utility substations such as requested by this Conditional Use. The property is within the Bentley Area of Influence.

**RECOMMENDATION:** Based on the information available prior to the public hearing, staff recommends the application be APPROVED subject to platting the property within one year and the subject to the following conditions:

1. The site shall be developed and operated in general conformance with the approved site plan. All improvements shall be completed within one year and prior to the commencement of operations.
2. The property shall provide screening per the Unified Zoning Code, as determined by the Planning Director through approval of a landscape plan prior to the issuance of a building permit. Screening may be omitted from the west property line due to the intervening transmission line.
3. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
4. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the

Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding property to the east, south and west is zoned RR and is in rural/agricultural use with a few scattered farmsteads. 125<sup>th</sup> Street North is the boundary with Harvey County. The land to the north in Harvey County is zoned A-1 Agricultural and is in similar agricultural use with scattered farmstead. The nearest resident to the proposed site is about 1/8 mile to the northwest in Harvey County. A transmission line borders the substation compound on its western edge.
2. The suitability of the subject property for the uses to which it has been restricted: The site is suited for rural residential zoning as presently zoned. The site is located immediately under a transmission line, making it a logical location of an electrical substation.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: It should not detrimentally impact nearby property as electrical facilities of this type are located throughout the county, and adequate screening along 125<sup>th</sup> Street North will be provided.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The substation supports the ASR project to benefit residents of south central Kansas, without any known hardship on the applicant.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide," 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identifies the site as "Rural." This classification encompasses land outside the 2030 urban growth area. It accommodates agricultural uses as well as rural based uses no more offensive than typical agricultural uses, including small-scale utility substations such as requested by this Conditional Use. The property is within the Bentley Area of Influence.
6. Impact of the proposed development on community facilities: Approval will support the ASR well project, primarily the new surface water treatment plant at 119<sup>th</sup> Street West and 117<sup>th</sup> Street North.

**DONNA GOLTRY**, Planning Staff presented the Staff Report.

**FOSTER** asked a question concerning the general provisions for screening with reference to the lower left-hand corner of the site plan.

**GOLTRY** commented that the landscape plan needed to be in conformance with the site plan and that staff would ensure that it was.

**MOTION:** To approve subject to staff recommendation.

**B. JOHNSON** moved, **J. JOHNSON** seconded the motion, and it carried (13-0).

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5. **Case No.: CON2009-43** - City of Wichita – Water Utilities c/o Deb Ary (owner/applicant); PEC, PA, c/o Rob Hartman (agent) Request City Conditional Use Amendment #1 to CU-564 to permit construction of 150' microwave tower for ASR communication on property zoned SF 5 Single-Family Residential on property described as:



A portion of Lot 1, Block 1, Sewage Treatment Plant No. 3 (NW) Addition, to Wichita, Sedgwick County, Kansas; more particularly described as follows:

Commencing at the Northeast corner of Lot 1, Block 1, Sewage Treatment Plant No. 3 (NW) Addition, to Wichita, Sedgwick County, Kansas; thence bearing S88°13'24"W, along the North line of said Lot 1, 418.00 feet; thence bearing S00°36'57"W, parallel with the East line of said Lot 1, 150.00 feet, to the point of beginning; thence continuing on a bearing of S00°36'57"W, a distance of 80.00 feet; thence bearing S88°13'24"W, a distance of 170.00 feet; thence bearing N00°36'57"E, a distance of 80.00 feet; thence bearing N88°13'24"E, a distance of 170.00 feet, to the point of beginning.

**BACKGROUND:** The City of Wichita – Water Utilities (WWU) is seeking to amend CU-564, a Conditional Use that permits a major utility, the Northwest Wastewater Treatment Plant, that is located on land zoned SF-5 Single-family Residential ("SF-5"). This application, amendment #1 to CU-564, would allow the construction of a 150-foot tall, galvanized steel, lattice, self-supporting, microwave communication tower. The 70-foot (x) 80-foot tower site is located in Parcel 1 of the approximately 145-acre Sewage Treatment Plant #3 (NW) Addition, located midway between 37<sup>th</sup> and 45<sup>th</sup> Streets North on the east side of 135<sup>th</sup> Street West. New wireless communication facilities over 65-feet in height in the SF-5 zoning district may be permitted with a Conditional Use.

The applicant has indicated (see attached exhibit #1) that the proposed facility is needed to provide constant remote monitoring and control of all planned and future Aquifer Storage and Recovery ("ASR") facilities and water production. These facilities include City Hall, the City's main water treatment plant (located northwest of downtown Wichita), two (2) surface water treatment plants, two (2) maintenance facilities, over 50 wells and pipeline valves, and diversion wells along the Little Arkansas River. The ASR project diverts and treats surplus water from Little Arkansas River for recharge of the Equus Beds aquifer, a source of water for the City of Wichita and the region. The applicant has referenced the Federal Drinking Water Security Act of 2009, which requires water treatment facilities to implement the same standards of security as chemical facilities. The WWU's Northwest Wastewater Treatment Plant does not allow unauthorized access, and the proposed tower will improve management and security of the facility by better communication technology. This standard of controlled access eliminates co-location of the WWU's antennas on existing towers in the area and will prevent co-location of other communication antennas on the WWU's proposed tower.

The area around the site is mostly active agricultural fields, broken up by the Cowskin creek and its flood zone/wetlands and hedges of trees. There are scattered single-family residences/farm houses (approximately 11, built 1880 – 2006) located 1/4-mile or more from the site. All the surrounding properties are zoned RR Rural Residential ("RR"), with the exception of agricultural land located within the city limits of Maize that abuts the site's east side.

The site plan shows the tower to be located within the WWU's existing Northwest Wastewater Treatment Plant facility, Parcel 1. The site plan shows the tower site to be setback at least 150 feet from abutting properties; the site meets the compatibility height standards for a wireless facility. This facility is gated with solid screening, landscaping and berms around it; the site meets the screening and landscaping requirements. The tower site will also be screened by the treatment plant's existing buildings, as well as being located a maximum distance from the area's existing single-family residences. The rest of the 145-acre City of Wichita owned property is shown as proposed and existing parks with proposed and existing fishing ponds and proposed and existing public wetlands.

The proposed tower and associated communication frequencies and wattages must meet standards determined by the Federal Aviation Administration (FAA) to pose no hazard to air navigation. The applicant has not provided an analysis of airspace in the area, which must be provided to staff prior to building permits being issued. The applicant has not provided any proposed lighting of the tower, which must meet the FAA requirements for aircraft warning. Section Art. III Sec.III-D.6.g.(5) of the UZC prohibits strobe lighting. The proposed galvanized surface of the tower will blend into the sky more readily than a red or white paint, which meets the intent of the "Design Guidelines" of the "Wireless

Communication Master Plan.” As noted the proposed tower will not allow co-location for other communication antennas, because of Federal mandated security standards. Art V Sec. V-D.6. of the UZC allows the City Council to modify Supplementary Use Regulations upon receiving a favorable recommendation from the MAPC.

**CASE HISTORY:** The site was annexed into the City of Wichita in 1999, at that time the site’s RR zoning became SF-5. The site was platted as Sewage Treatment Plant #3 (NW), recorded August 15, 2000. CU-564 was adopted February 10, 2000, for a wastewater treatment plant (major utility).

**ADJACENT ZONING AND LAND USE:**

NORTH:	RR	Agriculture field
SOUTH:	SF-5	Cowskin creek/flood zone/wetland, proposed park, single-family residences
EAST:	City of Maize	Agriculture field
WEST:	RR	Agriculture field, Cowskin creek/flood zone, single-family residences

**PUBLIC SERVICES:** Although no municipally supplied public services are required, all utilities are available to the site. The site has access to 135<sup>th</sup> Street West, a paved two-lane county highway. The 2030 Transportation Plan shows no change to the current status of this road.

**CONFORMANCE TO PLANS/POLICIES:** The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan requires a Conditional Use for new undisguised ground mounted facilities over 65-feet in height in the SF-5 zoning district, that comply with the compatibility setback standards. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area as much as possible; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; monopoles are favored over lattice type structures for up to 150-feet and antennas mounted flush to the support structure over triangular “top hat” antenna arrays; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing and 9) towers painted red and white instead of using strobe lighting. The application appears to meet most of these considerations.

This proposed amendment #1 would allow a 150-foot tall galvanized steel, lattice, self-supporting, microwave communication tower. The tower would be an accessory facility used to provide constant remote monitoring and control of all planned and future ASR facilities and water production. The ASR project diverts and treats surplus water from the Little Arkansas River for recharge of the Equus Beds aquifer, a source of water for City and the region. The proposed tower and its use provides a needed refinement to the ASR project to ensure future water sources needed for the continued health, safety and growth of the City of Wichita and the area. The proposed tower is not out of character with the area’s or Sedgwick County’s rural character, as communication towers have become a more common landscape feature in response to the growth of communication technologies.

**RECOMMENDATION:** Based upon these factors and the information available prior to the public hearing, planning staff recommends that amendment #1 of CU-564 be APPROVED subject to the following conditions:

- A. Allow a 150-foot tall, galvanized steel, lattice, self-supporting, microwave communication tower. The 70-foot (x) 80-foot tower site shall be located in CU-564’s Parcel 1, of Lot 1, Block 1, the Sewage Treatment Plant #3 (NW) subdivision.
- B. All requirements of Art. III Sec. III.D.6.g. of the Unified Zoning Code shall be met, with the exception of waiving the co-location requirement; Art. III Sec. III.D.6.g-8.

- C. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- D. The support structure shall be a “lattice” design that generally conforms to the approved site elevation and that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare. Antennas mounted flush to the support structure are preferred over triangular “top hat” antenna arrays and the applicant needs to demonstrate why the “flush” arrangement does not work.
- E. The tower shall be lighted per FAA regulations. The applicant shall submit a current copy of FAA approval to the MAPD and the Code Enforcement Office prior to the issuance of a building permit.
- F. The tower site located within Parcel 1 of CU-564 (Sewage Treatment Plant #3 (NW) Addition) shall be developed in general conformance with the approved site plan.
- G. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- H. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area around the site is mostly active agricultural fields, broken up by the Cowskin creek and its flood zone/wetlands and hedges of trees. There are scattered single-family residences/farm houses (approximately 11, built 1880 – 2006) located 1/4-mile or more from the site. All the surrounding properties are zoned RR Rural Residential (“RR”), with the exception of agricultural land within the city limits of Maize that abut the site’s east side.
2. The suitability of the subject property for the uses to which it has been restricted: CU-564, a Conditional Use for a major utility, specifically the Northwest Wastewater Treatment Plant was adopted in 2000. This wastewater facility established a major public utility in the area, which provides an essential service to the area. A Conditional Use may permit a wireless communication facility in the RR zoning area, with conformance to the UZC and the Wireless Communication Master Plan. The proposed facility conforms to most of those guidelines. The tower would be an accessory facility used to provide constant remote monitoring and control of all planned and future ASR facilities and water production at the site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on the RR zoned properties and agricultural activities in the area should be minimized to a degree by the Conditional Use standards of the UZC, which should limit noise, lighting, and other activity from adversely impacting these properties. Improvements to the communication technologies at the facility will benefit the region. The area needed to be developed for the site is confined within the existing Northwest Wastewater Treatment Plant facility, which in turn is located within the City owned 145-acres planned for parks, fishing ponds and wetlands; the tower site is the smallest proposed development in the 145-acres, which serves as a buffer for the area’s agricultural lands. The proposed tower is not out of character with the area’s or Sedgwick County’s rural character, as communication towers have become a more common landscape feature in response to the growth of communication technologies.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan requires a Conditional Use for new undisguised ground mounted facilities over 65-feet in height in the SF-5 zoning district, that comply with the compatibility setback standards. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area as much

as possible; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; monopoles are favored over lattice type structures for up to 150-feet and antennas mounted flush to the support structure over triangular “top hat” antenna arrays; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing and 9) towers painted red and white instead of using strobe lighting. The application appears to meet most of these considerations.

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5. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed tower does not detrimentally impact the operation of airports in the vicinity. The tower would be an accessory facility used to provide constant remote monitoring and control of all planned and future ASR (public) facilities and water production.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**FOSTER** referred to page 3 of the Staff Report, specifically, Conformance to Plans/Policies and commented that only two of the nine criteria set out are actually met. He said he did not see a 150-foot cell tower in a rural landscape as preserving the pre-existing character of the area. He said it appeared that the visual appearance and impact of the towers was being “sugar coated” in order to get them approved. He said he thought the focus should be more on the functionality and need for the facility. He said he re-read the Wireless Communications Master Plan which indicated that as of 2000, there were approximately 150 towers/facilities in existence. He mentioned the three different approaches and phases to getting communication systems built out over time. He said in terms of the Staff Report, it struck him as odd, trying to make these things accepted as going into rural character and they really are not. He asked what was the rationale for a 150-foot tower.

**LONGNECKER** respectfully disagreed that the report tried to sugar coat the request and said the 150-foot tower was needed meet the communication requirements of the ASR Project for monitoring their sites. He also pointed out that report said that towers have become a more common development in the county, typically as cell phone use has caused an expansion of towers needed to provide service. He mentioned that there were a cluster of established towers, some over 1,000-feet located in the county near Colwich and that any structure that goes up beyond the horizon is probably out of character with the flat profile of the land. He said you can’t get around fact that towers are typically an obtrusive feature to an area, but added that design considerations were a way to try to address that. He said monopoles are the least intrusive, but that a lattice tower was needed to provide the stability the ASR communications needs to relay information. He also noted that because of security considerations that the applicant was also asking for a waiver of the co-location requirement.

**FOSTER** said the statement “becoming a more common landscape feature” with regards to the growth of technology is misleading because when people think of landscape, they are usually thinking of natural elements. He said there is a functional need for these facilities and at some point they are going to have to face the fact that there are just too many towers. He said he did not think they were there yet, but he

said he was going to keep bringing up the question as the Commission looks at these requests because it seemed to him that the requests are walked right on through the process and approved every time.

**MARNELL** asked if this was in a growth area.

**LONGNECKER** responded that the property is owned by the City of Wichita and is outside any small city growth area although it abuts Maize on the east side.

**MARNELL** clarified that it outside 2030 Growth Area of the City of Wichita and Small Cities as well.

**DIRECTOR SCHLEGEL** said the area was inside the City limits so the growth area boundaries are not relevant. He added that this was the site of the northwest waste water treatment plan and that the area was anticipated for growth within the 2030 timeframe.

**MARNELL** commented that this tower was going to be sitting next to a residential area so it certainly should not be a lattice tower. He said if it was located out in a fully rural area then it would be different. He said if this was a cellular carrier and they were anticipating growth in that area, a monopole would be installed instead of a lattice tower. He said this is being exempted from being a monopole and he assumes it is because there is no anticipated development in the area.

**MARCIA BRUNGARDT, 10917 WEST FIRST STREET, 67212** said she co-owns the property directly to the north of the proposed tower. She said she has two concerns. She said this area may be developed at some point in the future even though there are no plans at the moment; however, she said 2030 is 20 years from now and that they may sell to a developer and she is concerned that this proposed tower may make her property worth less because of its close proximity to housing. She said her other concern is water in the area. She said when the City built the sewage treatment plant they installed a berm which diverted the water from flowing into the creek and that it now flows across the land and floods a portion of it, which can't be farmed because of the berm. She said she believes they cannot farm approximately 5 acres because of the berm. She asked if constructing a tower as located will cause further problems with water drainage, and added that the Staff Report mentioned diverting water, but she did not know where they plan on diverting it to. She said she is concerned about how the tower will look, decreasing the value of her land, and flooding and water drainage issues. She concluded by suggesting that the tower be placed at another spot on the property instead of the northeast corner. She added that someone is living in the house on the property.

**ROBERT HARTMAN, PEC, P.A., AGENT FOR THE APPLICANT** said the location of the tower was within a walled area of the treatment plant for security purposes. He said they have no plans of changing the grades in the area so this installation should not affect drainage. He said the location was selected by the consultant and its relationship to the plant and how it will tie into controls that are on the property now. He said this tower will help the Water Department to remotely control ASR projects. He said this installation also had to meet the requirement of the Federal Drinking Water Security Act which requires that it be within a secured location which is why it is located inside the walled compound of the treatment plan. He concluded by stating that they are in agreement with staff comments.

**MARNELL** asked Mr. Hartman to comment on the lattice tower versus the monopole tower, if he was qualified to do so.

**HARTMAN** stated that the consultant requested a lattice tower for the site; however, he was not qualified to say why.

**MARNELL** asked Mr. Hartman if he knew who would be qualified to answer that question.

**HARTMAN** said he would have to check with someone in Water Utilities.

**DIRECTOR SCHLEGEL** asked if this tower was part of the City's Point-to-Point System.

**LONGNECKER** said it may be a peripheral part of that project. He said they have visited with different City Departments about the monopole versus the lattice tower and that they have correspondence from the engineering groups that are participating in the projects that the lattice tower provides a more stable platform for this type of signal as opposed to the microwave signals used by cell phones. In addition, he said there was an economic consideration, which he acknowledged has been taken out of deliberations on the towers.

**MARNELL** said with all due respect that is not correct. He said he would like to hear from someone who has knowledge of this. He said it seemed to him that the City requires cellular carriers to use monopoles which in many cases are more expensive, but we don't require the City to do so, and that does not strike him as quite correct.

**LONGNECKER** said he thought that was a reasonable consideration and that it has been part of the dialogue and will be part of the dialogue on future towers.

**MARNELL** said he didn't think it should be for future tower discussion. He said this whole area is not far from land that is being developed now. He said they have difficulty doing anything with the lattice towers that have existed prior to the Wireless Communication Plan. He said since the Wireless Communication Plan was developed, the only lattice towers that have been installed have been in very rural areas like Mt. Hope, everything else has been monopoles even though it may have been cheaper to install lattice towers. He said it seems like there is a double standard. He concluded by saying that the technical answer doesn't jive for him and that he was qualified to understand that.

**MOTION:** To defer the item until Water Utilities provides proper documentation and/or information as to why a monopole would not be effective at this location.

**MARNELL** moved, **DENNIS** seconded the motion, and it carried (13-0).

**FOSTER** referenced the Staff Report and asked if the FAA approval that was needed typically came following action by the MAPC.

**LONGNECKER** said it could come either before or after Planning Commission consideration. He said typically the applicant has checked with the FAA prior on tower height and non-interference of signals prior submitting application for rezoning.

**FOSTER** commented that he believed there were some flight patterns through this area headed south.

**MCKAY** asked for clarification on the motion.

**The Chair** noted that the motion was to defer the item until Water Utilities provides proper documentation and/or information as to why a monopole would not be effective at this location.

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6. **Case No.: DER2009-13** – Request Unified Zoning Code amendment to event center and entertainment establishment and supplementary use requirements, residential fence height, and minor corrections.

General Location: City and County wide

**BACKGROUND:** The City of Wichita adopted amendments on December 4, 2009, to Chapters 3.11, 3.30, and 4.16 of the Code of the City of Wichita regarding Entertainment Establishments, Drinking Establishments and Community Events. This action completed an earlier round of changes adopted on March 23, 2009.

The recent codification of the Unified Zoning Code (“UZC”) incorporated a definition of Entertainment Establishment and Event Center and identified these uses as being treated the same as Taverns and Drinking Establishments and Nightclubs, according to supplementary use regulations of the UZC. DER2009-00013 would complete this process by adding the recently adopted definition of Teen Club from Sec. 3.30 of the City Code, and by identifying the zoning districts where these uses would be permitted.

As presented in this staff report, Teen Clubs, Event Centers and Entertainment Establishments would be permitted in the same districts as Taverns and Drinking Establishments and Nightclubs. This would be as a by-right use in the LC Limited Commercial (“LC”), GC General Commercial (“GC”), CBD Central Business District (“CBD”), LI Limited Industrial (“LI”) and GI General Industrial (“GI”) unless the use falls within a certain distance of a Church, public Park, public or parochial School or residential zoning district. Reasons for Conditional Use review include potential noise associated with gatherings where dancing and live entertainment are provided and the congregating of people in the parking lots patronizing the establishments.

Currently the distance triggering Conditional Use review is 200 feet. It is recommended this distance be retained for the entertainment venues (Teen Club, Event Center and Entertainment Establishment not involving alcohol sales) but that it be increased to 300 feet in conformance with the distance requirements for Sec. 3.30.180 of the City Code for those venues that are licensed for the sale of alcoholic beverages or cereal malt beverages (Taverns and Drinking Establishments, Nightclubs in the City and Entertainment Establishments in the City that are considered Nightclubs).

Other Changes: The other substantive change proposed in these amendments relate to residential fence heights and safety concerns. Complaints have been made by neighbors to Public Works and Office of Central Inspection about the danger of tall fences extending to the edge of the property line next to driveways. These are fences allowed as encroachments within setbacks by the UZC. The concern is the lack of visibility of pedestrians (especially children) when vehicles are backing out of driveways. Also, it is the inability to see vehicles on the street until the car is all the way to the edge of the street since the area between the fence and the street is typically less than a car length. The suggested amendment is to reduce the height of solid or semi-solid fencing (80 percent or more opacity) to three feet within 20 feet of the driveways. Essentially, this is adding a car length for visibility to observe pedestrians and vehicles are backing out of a driveway.

A few minor corrections are added to these amendments, related to spelling, capitalization, standard word usage and an entry omitted on Use Regulations Schedule in the codification effective September 25, 2009.

**CASE HISTORY:** Taverns and Drinking Establishments and Nightclubs have required Conditional Use review since January 18, 1991, when located in close proximity (200 feet) to residential zoning, schools, churches and parks. The amendments effective September 25, 2009, added Entertainment Establishments and Event Center to the same level of review. Teen Clubs and the addition of Entertainment Establishments not involving alcohol were redefined by the City Code amendments on December 4, 2009.

**CONFORMANCE TO PLANS/POLICIES:** The **Land Use-Residential/Objective B** of 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* includes the recommendation of “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” Strategy II.B3 states, “Evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise, or safety hazards upon residential areas.” Strategy II.B4 states, “Evaluate and implement an effective development plan review process to ensure that building placement and height, circulation, signage, screening and lighting for non-residential land uses do not adversely impact residential areas.” **Commercial Locational Guideline #3** of the *Comprehensive Plan* states, “Commercial development should have required site

design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses.”

Increasing the distance for Conditional Use review from 200 feet to 300 feet for alcohol related uses follows the licensing code amendments adopted by City Code. The additional inclusion of non-alcohol related uses (Teen Clubs and Entertainment Establishments with no license for alcoholic consumption) extends the review process to these venues and provides the potential to mitigate negative impact on adjacent uses based on noise, parking, congregating of large groups of people, etc. Perhaps the most similar uses not involving alcoholic consumption are Community Assembly and Recreation and Entertainment. The Unified Zoning Code treats Community Assembly (including Class B clubs) less stringently, allowed as a by-right use in B Multi-Family (“B”), GO General Office (“GO”) and LC and without distance requirements for separation from residential zoning, churches, parks and schools. Class A Clubs are treated the same as a Tavern or Drinking Establishment. Recreation and Entertainment, Indoor, is treated as a by-right use in LC but Recreation and Entertainment, Outdoor, becomes a by-right use in more intensive districts. Restaurants offer a different comparison. Restaurants, as defined in the UZC, allow consumption of alcoholic beverages as part of the dining services, but only if receipts from food sales exceed 50 percent or more of gross revenues. Since 1991, if a Restaurant cannot meet this criterion, it is reclassified as a Tavern or Drinking Establishment, and becomes subject to Conditional Use distance triggers. This differs from the City Code, where the transition from Tavern or Drinking Establishment is lowered to only 30 percent of gross revenues. In this case, the UZC has adopted a regulation more stringent than general City Code to respond to the Comprehensive Plan’s policies for reducing the impact of commercial uses on residential development and certain institutional uses (schools, parks, churches).

The proposed fence height amendment supports traffic safety and sight clearance objectives embodied in the Traffic Code.

**RECOMMENDATION:** Based on these factors and the information available prior to the public hearing, it is recommended that the proposed amendments be recommended for adoption.

This recommendation is based upon the following findings:

1. The zoning, uses and character of the neighborhood: As proposed, Entertainment Center, Event Center and Teen Club would be allowed in the same zoning districts as similar entertainment venues and places where alcohol is consumed.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The Conditional Use review process allows consideration of factors to reduce detrimental effects on nearby property.
3. Relative gain to the public health, safety and welfare as compared to the loss in value or hardship imposed upon the applicant: The Conditional Use of entertainment venues balances the public concerns with the individual applicant. The reduced fence heights protect public safety with minimal changes to fencing practices.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The **Land Use-Residential/Objective B** of *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* includes the recommendation of “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” Strategy II.B3 states, “Evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise, or safety hazards upon residential areas.” Strategy II.B4 states, “Evaluate and implement an effective development plan review process to ensure that building placement and height, circulation, signage, screening and lighting for non-residential land uses do not adversely impact residential areas.” **Commercial Locational Guideline #3** of the *Comprehensive Plan* states, “Commercial development should have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses.”



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The proposed fence height amendment supports traffic safety and sight clearance objectives embodied in the Traffic Code.

5. Impact of the proposed development on community facilities: Public facilities should not be impacted by the proposed change.

**DONNA GOLTRY**, Planning Staff presented the Staff Report. She commented that Paul Gunzelman from Public Works Traffic Engineering was present to answer any questions.

**MILLER-STEVENS** asked about the delineation of 200 feet for one group, and 300 feet for another (from a church, park, school or residential zoning).

**GOLTRY** responded that the increased footage was to try to separate the alcohol-based establishments. She said all could have been included; however, staff felt that might be burdensome for some establishments like the teen clubs.

**MILLER STEVENS** said her concern was that the "teen club" was often used by less than scrupulous proprietors to avoid some of the more stringent regulations and controls. She said she would like to see the teen clubs added to the 300 foot requirement.

**MCKAY** commented that this issue was brought up during previous zoning code amendment discussions with staff. He asked staff to explain how teen clubs within churches would be handled.

**GOLTRY** said if the club was part of a church activity, it would be exempt from the definition of "teen club." She deferred to Sharon Dickgrafe for further clarification.

**SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY** said if the activity is encompassed in a school or church, then it does not have to be licensed as a teen club or entertainment establishment. She added that previously, teen clubs have not been regulated. She said they have now been combined with the entertainment establishment ordinances which have combined the old "dance hall" and "cabaret" ordinances to get regulations and inspections as part of one group of ordinances.

**HENTZEN** asked staff to describe or define a teen club or teen center.

**GOLTRY** briefly described the definition of teen club as defined by Section 3.30.020 of the City Code.

**DICKGRAFE** said that a teen club was defined in the licensing code as a building or facility that offers teen dances. She said age requirements are part of that, which excludes people less than 14 years of age or over 18 years of age (unless they are a manager or employee of the teen club).

**HENTZEN** clarified and that definition is in the licensing code.

**MARNELL** asked staff to explain Article III, Section III-E.1.e(1)(b), specifically, the last part referring to "...right-of-way line, and further that along any Lot Line within 20 feet of the intersection with an ingress/egress driveway...."

**GOLTRY** said she believes the word "intersection" may be a little confusing. She said for this framework that would be the point where the driveway meets the property line, not a street intersection, but intersecting points. She asked if anyone had any ideas for better words to describe the situation.

**MARNELL** said not all lot lines come from the street back. He said some lot lines in backyards, especially in older sections of town, could be within 20 feet of a driveway. He said this proposed change may have unintended consequences.

**PAUL GUNZELMAN, TRAFFIC ENGINEER, PUBLIC WORKS** referred to several pictures depicting the types of situations this proposed revision was intended to deal with. He explained the safety hazard with fencing that was not graduated down to three feet at sidewalks and some corners as well.

**MARNELL** said behind houses lot lines run in other directions that intersect within 20 feet of an ingress/egress driveway and that was his concern.

**GUNZENLMAN** said staff would look at the wording on the proposed revision.

**GOLTRY** said the purpose and intent of this change was to establish triangular sight clearance area at the edge of properties for driveways.

**HILLMAN** complimented staff on the visual examples they provided of the problem areas and added that they are a significant safety hazard. He asked if this provision will be retroactive to any existing structures.

**GOLTRY** replied no, this provision was for future fences.

**MITCHELL** asked if staff has concluded that landscaping is also a problem.

**GOLTRY** said she believed landscaping was addressed in the Traffic Code.

**GUNZELMAN** explained that the Traffic Code addresses landscaping at intersections and intersecting right-of ways, streets, and alleys, but added that it did not address mid-block locations which was probably something staff should look at revising.

**MITCHELL** asked if staff would object to deferring the issue until that is done.

**GUNZELMAN** replied no.

**GOLTRY** commented that was a logical item to add and that perhaps that could be made part of the motion that bushes be trimmed within 33 inches or trees trimmed to a height of six feet within the same area.

**DIRECTOR SCHLEGEL** asked if landscaping and trimming was something to put in the Zoning Code or Traffic Code.

**GOLTRY** replied that she dealt with these landscaping issues on a daily basis in the context of the Landscape Ordinance, which is where this belongs in terms of commercial landscaping; however, this is dealing with how much encroachment can be allowed under the Zoning Code. She mentioned that you can encroach in a setback to build a fence, as long as the fence is six feet or less. She said by adding an amendment of this nature, it would further regulate what kinds of encroachments are allowed within setbacks. She referred to legal counsel for further clarification.

**DICKGRAFE** explained that this was not necessarily a zoning issue as much as a traffic or landscape ordinance change.

**MITCHELL** asked what was the Commission considering today.

**GOLTRY** said the Unified Zoning Code.

**DIRECTOR SCHLEGEL** asked why defer adoption of the Zoning change when what is needed is an amendment to the Landscape or Traffic Code rather than amending the Zoning Code.

**GUNZELMAN** suggested that staff have more discussion with legal counsel concerning this issue.

**MOTION:** To defer the item for two weeks.

**MITCHELL** moved, **HILLMAN** seconded the motion, and it carried (13-0).

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**7. Case No.: 2009-2018 Capital Improvement Program:** Request Conformity of the proposed 2009-2018 City of Wichita Capital Improvement Program with the Wichita-Sedgwick County Comprehensive Plan

**Background:** On December 17, 2009, the Advance Plans Committee of the Metropolitan Area Planning Commission received a presentation on the proposed *2009-2018 City of Wichita Capital Improvement Program* (C.I.P.). Copies of the City's proposed C.I.P. have been distributed to all members of the MAPC for their review prior the MAPC meeting of January 7, 2010.

**Analysis:** Section 12-748 of Kansas statutes requires a planning commission to review the capital improvement program (C.I.P.) of its municipality to make a finding as to whether the proposed public improvements, public facilities or public utilities conform with the adopted comprehensive plan. If the planning commission finds that any such proposed public improvement does not conform to the plan, the commission shall submit in writing to the governing body, the manner in which such improvement does not conform.

Staff has reviewed the proposed *2009-2018 City of Wichita Capital Improvement Program* and has determined that the public improvements proposed therein conform with the adopted Wichita-Sedgwick County Comprehensive Plan. The Advance Plans Committee also reviewed the proposed C.I.P. and unanimously passed a motion at its meeting of December 17, 2009, finding the proposed *2009-2018 City of Wichita Capital Improvement Program* to be in conformity with the Wichita-Sedgwick County Comprehensive Plan as amended.

**Recommended Action:**

That the Metropolitan Area Planning Commission find the proposed *2009-2018 City of Wichita Capital Improvement Program* to be in conformity with the adopted Wichita-Sedgwick County Comprehensive Plan as amended.

**DAVE BARBER**, Planning Staff presented the Staff Report.

**MARK MANNING, FINANCE DEPARTMENT** gave a brief overview of the Capital Improvement Program (CIP) Budget stating that it was a ten year plan.

**HILLMAN** said he appreciated the presentation and that it was well done. He added that Commissioners had received copies of the CIP report which he reviewed. He said the Park Department PROS Plan was not being taken seriously – not to be funded until 2015. He said he was concerned about the public's priorities and the needs in the Park Department.

**FOSTER** mentioned debt service funding at the 8.5 mill levy and reduced revenues. He asked, in the current economy and changes in valuation, and the fact that this was projected over the life of the CIP, what was the strategy behind that?

**MANNING** said the debt service levy had been 10 mills since the early 1970's. He said two years ago that was reduced to 9 mills in the operating budget, and this year it is being proposed to be reduced to 8.5 mills. He said two things are occurring. He said the funding, which is \$5 million a year or \$50 million over the life of the CIP is being diverted from debt service fund to the general fund, and the general fund is financing an increase in contracted street maintenance. He said the funds are essentially being shifted from debt service to finance capital projects, to the operating budget to finance more short term street maintenance. He said there was no question that it would reduce the capacity of the debt service fund, which in turn, reduces the City's ability to finance GO projects.

**VAN FLEET** asked what the City's bond rating was.

**MANNING** explained that different agencies have different rating system, but that generally the City's rating was AA.

**MITCHELL** noted the misspelling of the word "levee" in the CIP document.

**MILLER STEVENS** asked if the Kellogg construction has a dedicated tax.

**MANNING** responded yes, Kellogg was financed with local sales taxes.

**HILLMAN** commented on the rail plan still being developed. He referenced recent newspaper articles concerning returns on rails. He said if the City decides to do something with the rail service, or further elevate the rail corridor before 2018, where could the City find the money?

**MANNING** responded that there was no question there was need for those projects and he guessed that when the study was completed, an adjustment will be made to shift funds to the rail projects, if that is the priority.

**MOTION:** To find the proposed 2009-2018 *City of Wichita Capital Improvement Program* to be in conformity with the adopted Wichita-Sedgwick County Comprehensive Plan as amended.

**J. JOHNSON** moved, **B. JOHNSON** seconded the motion, and it carried (13-0).

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**NON-PUBLIC HEARING ITEMS**

8. Other Matters/Adjournment

**MILLER STEVENS** commented that when the CIP was presented to DAB I she took the opportunity to mention the work of the MAPC and Advance Plans Committee with regards to insuring that the CIP was in conformance with the Comprehensive Plan. She said she pointed out that the Comprehensive Plan was a document that people needed to pay attention to. She said she also mentioned the need to have Planning Department staff dedicate time and attention to upgrading and renewing the plan and the importance of having a relevant document. She said she didn't think a lot of people understand what the Commission does in regards to this sort of thing. She encouraged other Commission members to make that point to the City Council members and County Commissioners who appointed them.

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**DENNIS** asked about the status of the request to obtain identification badges to allow Commissioners access to City Hall.

**MILLER STEVENS** said she had a meeting tomorrow with Councilwoman Williams to discuss that issue further.

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The Metropolitan Area Planning Department informally adjourned at 3:47 p.m.

State of Kansas                 )  
Sedgwick County             ) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)